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Reply
Brief
8/19/02

PATENT
Docket No. 55019US002 (Formerly 55019USA1A)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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|-------------|--|---|-----------------|-----------|
| Appellants: | F. Andrew UBEL et al. |) | Group Art Unit: | 3728 |
| Serial No.: | 09/551,706 |) | Examiner: | T. Arnold |
| Conf. No.: | 2678 |) | | |
| Filed: | 18 April 2000 |) | | |
| For: | APPARATUS AND METHODS FOR PACKAGING AND STORING MOISTURE-SENSITIVE PRODUCTS IN RESEALABLE POUCHES | | | |

REPLY BRIEF UNDER 37 C.F.R. § 1.193(b)(1)

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

Appellants present this Reply Brief in response to the Examiner's Answer dated 19 June 2002 and in support of the appeal from the final rejections of claims 1-2, 4-23, 25-32, 38-46, and 61-62 of the above-identified patent application as indicated in the Notice of Appeal filed 5 March 2002. Appellants incorporate by reference their Appeal Brief dated 9 May 2002.

Response to Examiner's Arguments

I. Whether Claim 1 is anticipated under 35 U.S.C. § 102(b) by Nakamura

In the Examiner's Answer, the Examiner alleges that Appellants have given the term "moisture sensitive" a narrower definition in their arguments than the definition given in the Specification. The Examiner alleges that "[t]he term 'moisture sensitive' alone does not necessarily have to be interpreted as a synthetic splinting material. The Specification does not define 'moisture sensitive' as being a synthetic splinting material."

Appellants respectfully traverse the Examiner's allegations.

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Appellants submit that claim 1 is not anticipated by Nakamura because Nakamura fails to teach each and every element of the claim. For example, claim 1 recites a moisture-sensitive product having a continuous length. A moisture-sensitive product is defined in the Specification as a product that, when exposed to moisture, including ambient humidity levels, rapidly stiffens and forms a cured splint or cast. *See* Specification, page 1, lines 19-21. Contrary to the Examiner's allegations stated above, Appellants do not define the term "moisture sensitive" as a synthetic splinting material.

In contrast to claim 1, nothing is identified in Nakamura that teaches a moisture-sensitive product that is consistent with the clear definition of the term "moisture-sensitive" given in the present invention's Specification. Instead, Nakamura teaches "wet tissues, i.e., fibrous materials, such as non-woven fabrics, woven fabrics, or gauze, impregnated with toilet water or cleaning solution" Nakamura, column 1, lines 18-20. In other words, the wet tissues taught by Nakamura do not rapidly stiffen and form a cured splint or cast. As Nakamura does not teach a "moisture-sensitive" product consistent with this definition, Nakamura fails to anticipate claim 1.

For at least the above reasons and the reasons stated in Appellants' Appeal Brief, Appellants submit that claim 1 is not anticipated by Nakamura.

IV. Whether Claims 1-2, 4-10, 12-16, 25-28, 32, 38-46, and 61-62 are anticipated under 35 U.S.C. § 102(b) by Parker et al.

With regard to claim 32, the Examiner, in the Examiner's Answer, alleges that, were product being dispensed from Parker's pouch, "*compression member 36 could be utilized in such a way so as to conform the product to the pouch*, as required by claim 32." Appellants traverse this allegation.

Appellants submit that Parker et al. does not anticipate claim 32 because such reference does not teach each and every element of claim 32. For example, claim 32 explicitly recites that the compression members of the compression device conform the shape of the end of the pouch to the shape of the product as the product is dispensed from the pouch through the opening. In contrast to claim 32, Parker et al. teaches that the

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alleged compression device (i.e., clamp 36) must be removed prior to dispensing product: "A desired length of medical material 14 is dispensed by removing clamp 36 or unzipping zippers 38 and grasping the exposed end of the medical material 14." Parker et al., column 6, lines 56-58. Therefore, Parker et al. teaches away from using clamp 36 as a compression device.

Further, the Examiner's allegation that clamp 36 "could" be utilized in such a way so as to conform the product to the pouch is completely irrelevant. The standard for anticipation under 35 U.S.C. § 102 is not what the references could teach, but instead the proper standard is what the references do teach. To allege that this burden is met by what a reference could teach is to ignore the anticipation requirement that the references teach all of the elements of the claimed invention. As a result, Parker et al. cannot anticipate claim 32.

With regard to claim 42, the Examiner alleges that the two flat portions of clamp 36 of Parker et al. function as compression members, and that clamp 36 will function as a compression device. Appellants traverse this allegation.

As stated above, clamp 36 cannot function as a compression device because it must be removed from the pouch prior to dispensing product. Further, the Examiner has failed to address Appellants' argument that Parker et al. does not teach both a compression device and a sealing device as recited in claim 42. If the two flat portions of clamp 36 function as compression members of a compression device as alleged by the Examiner, then there appears to not be a part of clamp 36 left that could function as a sealing device.

For at least the above reasons and the reasons stated in Appellants' Appeal Brief, Appellants submit that claims 1-2, 4-10, 12-16, 25-28, 32, 38-46, and 61-62 are not anticipated by Parker et al.

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VII. Whether claims 11, 21, and 30-31 are unpatentable under 35 U.S.C. § 103(a) over Parker et al.

Regarding claim 21, the Examiner, in the Examiner's Answer, alleges that multiple sections of item 14 of Parker et al. will form a mushroom shape. Appellants traverse this allegation.

The Examiner has failed to identify any teaching or suggestion in Parker et al. that at least two sections of medical material 14 each form a mushroom-shape as is recited by claim 21. The Examiner's allegation has no support in Parker et al. One of the requirements of a *prima facie* case of obviousness is that the references must teach or suggest all of the elements of the claimed invention. The Examiner has failed to meet this requirement.

For at least the above reasons and the reasons stated in Appellants' Appeal Brief, Appellants submit that claims 11, 21, and 30-31 are not *prima facie* obvious in view of Parker et al.

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Conclusion

For the reasons provided herein and in the Appeal Brief dated 9 May 2002, Appellants respectfully submit that pending claims 1-2, 4-23, 25-32, 38-46, and 61-62 are patentable in view of the cited references. Review and reversal of the rejections are respectfully requested.

CERTIFICATE UNDER 37 C.F.R. § 1.8:

The undersigned hereby certifies that this paper is being transmitted by facsimile in accordance with 37 CFR §1.6(d) to the Patent and Trademark Office, addressed to Assistant Commissioner for Patents, Washington, D.C. 20231, on this 16th day of August, 2002, at 11:30 a.m. (Central Time).

Signature: Rachel Gagliardi-Adabau
Name: Rachel Gagliardi-Adabau

16 August 2002

Date

Respectfully submitted for

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